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**Massachusetts Society for the Prevention of Cruelty to Children and Service Employees International Union, Local 509, AFL-CIO. Case 1-CA-39151**

August 16, 2001

**DECISION AND ORDER**

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN  
AND WALSH

Pursuant to a charge filed on June 19, 2001, the General Counsel of the National Labor Relations Board issued a complaint on June 27, 2001, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 1-RC-21304. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On July 16, 2001, the General Counsel filed a Motion for Summary Judgment. On July 18, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding. In addition, in its response to the Notice to Show Cause, the Respondent for the first time contends that the Union has a disqualifying conflict of interest.<sup>1</sup>

<sup>1</sup> In support of this contention, the Respondent asserts that "for many years the Union has opposed the privatization of statewide mental health services in order to preserve work for its public-employee members, who make up a majority of the Union's membership." This issue could have been litigated in the prior representation proceeding, and the Respondent does not contend that it has newly discovered or previously unavailable evidence concerning this matter. Accordingly, we find that this issue may not be litigated in this unfair labor practice proceeding. *Colonial Gardens Care Center*, 268 NLRB 613 fn. 2 (1984). Accordingly, we deny the Respondent's cross-Motion for Summary Judgment and motion for a hearing.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a nonprofit corporation with an office and a place of business in Jamaica Plain, Boston, Massachusetts (Respondent's Boston facility), and approximately 30 other facilities throughout the Commonwealth of Massachusetts, has been engaged in providing mental health care services, child welfare services, and behavioral programs to children and families within the Commonwealth of Massachusetts. Annually, the Respondent, in conducting its business operations, derives gross revenues in excess of \$250,000, and purchases and receives at its Massachusetts facilities goods valued in excess of \$5000 directly from points located outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held April 11, 2001, the Union was certified on April 23, 2001, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time, regular part-time and fee for service professional and non-professional employees employed by the Employer at its 555 Amory Street, Jamaica Plain, Boston, Massachusetts facility, clinicians, family assessment clinicians, social workers, nurses, clinical nurse specialists, occupational therapists, speech and language pathologists, SAIN coordinators, physical therapists, parent support coordinators, developmental educators, program coordinators, service coordinators, early child development specialists, psychologists, CES workers, case managers, group leaders, home visitor

II's, supervised visitation monitors, all claims support specialists, intake specialists, administrative assistants, program assistants, child care workers, receptionists, bookkeepers, secretaries, clerks, telephone specialists, custodians, department supports, teachers, family support workers, family advocates, parent aides, home visitor I's, parent partners, teacher's aides, support group liaisons, father advocates, and father's support liaisons, and all other non-professional employees, but excluding all guards, regional administrators, volunteer directors, volunteer coordinators, parent educators, state-wide program directors, program directors, supervisors, team leaders, regional program directors, office managers, prevention coordinators, assistant directors, administrative planners, lead teachers, direct service managers, maintenance and facilities managers, and all other supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

#### *B. Refusal to Bargain*

Since April 25, 2001, the Union has requested the Respondent to bargain and, since the same date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By refusing on and after April 25, 2001, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Massachusetts Society for the Prevention of Cruelty to Children, Jamaica Plain, Boston, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Service Employees International Union, Local 509, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time, regular part-time and fee for service professional and non-professional employees employed by the Employer at its 555 Amory Street, Jamaica Plain, Boston, Massachusetts facility, clinicians, family assessment clinicians, social workers, nurses, clinical nurse specialists, occupational therapists, speech and language pathologists, SAIN coordinators, physical therapists, parent support coordinators, developmental educators, program coordinators, service coordinators, early child development specialists, psychologists, CES workers, case managers, group leaders, home visitor II's, supervised visitation monitors, all claims support specialists, intake specialists, administrative assistants, program assistants, child care workers, receptionists, bookkeepers, secretaries, clerks, telephone specialists, custodians, department supports, teachers, family support workers, family advocates, parent aides, home visitor I's, parent partners, teacher's aides, support group liaisons, father advocates, and father's support liaisons, and all other non-professional employees, but excluding all guards, regional administrators, volunteer directors, volunteer coordinators, parent educators, state-wide program directors, program directors, supervisors, team leaders, regional program directors, office managers, prevention coordinators, assistant directors, administrative planners, lead teachers, direct service managers, maintenance and facilities managers, and all other supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Jamaica Plain, Boston, Massachusetts, cop-

ies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 25, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 16, 2001

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Peter J. Hurtgen, Chairman

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Wilma B. Liebman, Member

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John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

#### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

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<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT refuse to bargain with Service Employees International Union, Local 509, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time, regular part-time and fee for service professional and non-professional employees employed by us at our 555 Amory Street, Jamaica Plain, Boston, Massachusetts facility, clinicians, family assessment clinicians, social workers, nurses, clinical nurse specialists, occupational therapists, speech and language pathologists, SAIN coordinators, physical therapists, parent support coordinators, developmental educators, program coordinators, service coordinators, early child development specialists, psychologists, CES workers, case managers, group leaders, home visitor II's, supervised visitation monitors, all claims support specialists, intake specialists, administrative assistants, program assistants, child care workers, receptionists, bookkeepers, secretaries, clerks, telephone specialists, custodians, department supports, teachers, family support workers, family advocates, parent aides, home visitor I's, parent partners, teacher's aides, support group liaisons, father advocates, and father's support liaisons, and all other non-professional employees, but excluding all guards, regional administrators, volunteer directors, volunteer coordinators, parent educators, state-wide program directors, program directors, supervisors, team leaders, regional program directors, office managers, prevention coordinators, assistant directors, administrative planners, lead teachers, direct service managers, maintenance and facilities managers, and all other supervisors as defined in the Act.

MASSACHUSETTS SOCIETY FOR THE  
PREVENTION OF CRUELTY TO CHILDREN